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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

14 CRNOGORSKA PLOVIDBA A.D.
15 KOTOR,

16 Plaintiff,

17 vs.

18 GLOBAL AMERICAN TRANSPORT
19 LLC,

20 Defendant,

21 and

22 INMOTION HOSTING, INC.; BANK
23 OF AMERICA, N.A.,

24 Garnishees.

Case No.

IN ADMIRALTY, Fed. R. Civ. P. 9(h)

EX PARTE APPLICATION FOR:

**(A) ORDER AUTHORIZING
ISSUANCE OF PROCESS OF
MARITIME ATTACHMENT AND
GARNISHMENT;**

**(B) APPOINTMENT OF SPECIAL
PROCESS SERVER;**

(C) EXPEDITED REVIEW;

POINTS AND AUTHORITIES.

25 Plaintiff Crnogorska Plovidba A.D. Kotor ("Kotor" or "Owners") files this *Ex*
26 *Parte* Application pursuant to Supplemental Rule B for Certain Admiralty and
27 Maritime Claims of the Federal Rules of Procedure, for an order authorizing
28 issuance of process of maritime attachment and garnishment for the property of
Defendant Global American Transport LLC held or controlled by garnishees

1 Inmotion Hosting, Inc. and Bank of America, N.A. within in this District.

2 Waiver of notice for this Application is warranted under L.R. 7-19.2 due to the
3 intangible nature of the property sought to be attached and garnished, as
4 detailed in the Verified Complaint (bank accounts and other intangible property),
5 which can be quickly removed from this District before process of maritime
6 attachment and garnishment issues and is executed.

7 This Application is based on Kotor's Verified Complaint on file with the Court,
8 the attached memorandum of points and authorities, accompanying proposed
9 order and proposed Process of Maritime Attachment and Garnishment, the
10 relevant pleadings, documents and matters of which the Court may take judicial
11 notice, and such other matters which may properly come before this Court.

12 Date: September 5, 2024

Respectfully submitted,

13
14 /s/ Neil B. Klein

Neil B. Klein

15 Maria del Rocio Ashby

16 McKasson & Klein LLP

Attorneys for Plaintiff Crnogorska

17 Plovidba A.D. Koto

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19 /s/ J. Stephen Simms

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23 [Pro hac vice application forthcoming]

POINTS AND AUTHORITIES

I. INTRODUCTION

Kotor applies *ex parte* for an order directing the Clerk to issue Process of Maritime Attachment and Garnishment (“Writ”) for the property of Defendant Global American Transport LLC (“GAT” or “Defendant”) held or controlled by named Garnishees Inmotion Hosting, Inc. and Bank of America, N.A., and providing further that the Clerk may issue additional writs on application by Kotor.

In addition, to protect against the possibility of accounts held by Garnishees being removed from the District, Kotor seeks the appointment of a special process server, waiver of the notice requirements of Local Rule 7-19 and respectfully requests that the Court make expedited review of the Verified Complaint and this Application.

II. THE CONDITIONS FOR RULE B PROCESS ARE SATISFIED

Under Rule B of the Supplemental Admiralty Rules, a plaintiff may attach a defendant's property if 4-conditions are met: (1) plaintiff has a valid prima facie admiralty claim against the defendant; (2) defendant cannot be found within the district; (3) property of the defendant can be found within the district; and (4) there is no statutory or maritime law bar to the attachment.” *Equatorial Marine Fuel Mgmt. Servs. PTE v. MISC Berhad*, 591 F.3d 1208, 1210 (9th Cir. 2010) (*citing Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006)); Fed. R. Civ. P., Supp. Rule B.

The standard of proof for a plaintiff seeking maritime attachment under Rule B is permissive in the initial pleading stage as plaintiff need not prove its claim by a preponderance of the evidence, or to a similar standard, but rather present sworn factual assertions satisfying the four prerequisites.

a. Kotor Has a Valid Admiralty Claim Against Defendant

Kotor has filed a Verified Complaint, pursuant to Rule 9(h) of the Federal Rules of Civil Procedure and Admiralty Rule B, setting out its claim for security

1 for damages, as well as arbitration and related fees in the amount of at least
2 **USD 1,757,542.35** (including interests, costs and attorney's fees), sustained as
3 a result of Defendant's breach of two vessel charter parties.

4 The allegations in Plaintiff's Verified Complaint state a *prima facie* admiralty
5 claim under general maritime law, meet the conditions of Rule B, and are
6 incorporated herein by reference. See *Fednav, Ltd. v. Isoramar, S.A.*, 925 F.2d
7 599, 601 (2d Cir. 1991) ("It is well-established that a charter party agreement is
8 a maritime contract.") (citation omitted); *Interpool, Ltd. v. Char Yigh Marine, S.A.*,
9 890 F.2d 1453, 1454, fn. 2 (9th Cir. 1989).

10 **b. Defendant Cannot be Found Within the District**

11 In support of its Verified Complaint, Kotor (at the end of the complaint) has
12 filed the verification and affidavit of Attorney J. Stephen Simms, averring that
13 Defendant cannot be found within the District for purposes of Rule B and LAR
14 B.2, and setting out the efforts undertaken to find and serve Defendant.

15 Specifically, Plaintiff is informed and believes Defendant cannot be found
16 within the Central District of California. To Plaintiff's knowledge, none of the
17 managers or officers of Defendant are now within this District. Further, based on
18 a search of the California Secretary of State's business records, Defendant is
19 not incorporated or registered to do business in California, does not maintain an
20 office in California and does not have a registered agent for the receipt of service
21 of process in California.

22 **c. Property of Defendant Can be Found in the District**

23 Kotor seeks attachment of Defendants' property held by Garnishee Inmotion
24 Hosting, Inc. and Bank of America, N.A., and any other funds/property
25 maintained by them for the benefit of Defendant.

26 The Verified Complaint sets out the factual "bases for its belief that
27 [D]efendant's property may be found within this District, as well as the garnishees
28 it seeks authorization to serve." *Wight Shipping, Ltd. v. Societe Anonyme*

1 *Marocaine de L'Industrie Du Raffinage S.A.*, 2008 U.S. Dist. LEXIS 106420, *7
2 (S.D.N.Y. Nov. 24, 2008) (considering pleading requirements for “property held by
3 garnishee” under Rule B). “At the pleading stage, no obligation exists to prove
4 anything, only to allege ‘enough facts to state a claim to relief that is plausible on
5 its face.’” *Capitol Records, Inc. v. City Hall Records, Inc.*, 2008 U.S. Dist. LEXIS
6 55300, *21–22 (S.D.N.Y. July 18, 2008) (quoting *Bell Atlantic Corp v. Twombly*, 550
7 U.S. 544 (2007)).

8 Kotor is informed and believes that Defendant does now, or will during the
9 pendency of this action, have tangible and intangible property within the Central
10 District of California, namely, bank accounts and other intangible property held
11 by the Garnishees for Defendant, As set out in the Verified Complaint, the
12 Garnishees are present in this District by their respective agents and offices,
13 and such accounts are therefore subject to Rule B attachment and garnishment.

14 Kotor’s allegations therefore demonstrate a “plausible” entitlement to a
15 maritime attachment and garnishment because they “at least show that it is
16 plausible to believe that Defendant’s property will be “in the hands of” garnishees
17 in [this District] at the time the requested writ of attachment is served or during the
18 time that service is affected. *Peninsula Petroleum Ltd. v. New Econ Line Pte Ltd.*,
19 2009 U.S. Dist. LEXIS 24470, *5 (S.D.N.Y. Mar. 17, 2009).

20 **d. No Statutory or Maritime Law Bar to Rule B Process**

21 There is no statutory or maritime bar to the instant application for Rule B
22 process of maritime attachment and garnishment.

23 Plaintiff commences this Rule B maritime attachment to secure the
24 appearance of Defendant and to obtain security in aid of Seacon’s arbitration
25 action in London. See *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460
26 F.3d 434, 437-438 (2d Cir. 2006).

27 **III. EXPEDITED REVIEW IS APPROPRIATE**

28 Kotor requests that this Court to review this application on an expedited

1 basis, as contemplated by Rule B(1)(b) which provides:

2 The plaintiff or the plaintiff's attorney must sign and file with the
3 complaint an affidavit stating that, to the affiant's knowledge, or on
4 information and belief, the defendant cannot be found within the district.

5 The court must review the complaint and affidavit and, if the conditions
6 of this Rule B appear to exist, enter an order so stating and authorizing
7 process of attachment and garnishment. The clerk may issue
8 supplemental process enforcing the court's order upon application
9 without further court order.

10 See also Notes of Advisory Committee on Rules-1985 Amendment for Rule B,
11 which provide in relevant part "The rule envisions that the order will issue when
12 plaintiff makes a prima facie showing that he has a maritime claim against the
13 defendant in the amount sued for and the defendant is not present in the district.
14 A simple order with conclusory finding is contemplated."¹

15 Based on the Verified Complaint and Affidavit (last page of the complaint),
16 and this application for issuance of Rule B process and appointment of a special
17 process server to facilitate expedited service of the writ, Kotor respectfully
18 requests prompt assignment to a judge of this Court for expedited review and
19 ruling on this Application.

20 **IV. APPOINTMENT OF SPECIAL PROCESS SERVER**

21 Kotor desires that the Rule B Process be served on Garnishees with all
22 deliberate speed so it will be fully protected against the possibility of the accounts
23 held by Garnishees, which Kotor seeks to attach as security for its maritime claim
24 against Defendant, being removed from the custody of Garnishees. On that
25 basis, Kotor requests that the Court order the appointment of a special process
26 server pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure, Rule B

27
28 ¹ Local Rule B.2 also contemplates an affidavit to accompany the complaint for
purposes of facilitating issuance of Rule B process of attachment and garnishment.

1 of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture
2 Actions, and Local Rule 64-2.

3 Undersigned counsel or their designate, all of whom are over 18-years of age
4 and not party to this action, can act as special process server to effect service of
5 Process of Maritime Attachment and Garnishment on the Garnishees, by its
6 respective agent in this District, as set out in the Verified Complaint.

7 There is no need to require that service be made by a U.S. Marshal because
8 service only involves delivery of the writ to Garnishee(s) believed to be in
9 possession of the targeted property, which is not physical property. Further, to
10 avoid the need to repeatedly serve Garnishees, Kotor respectfully seeks leave,
11 as set out in the proposed order, for any writ served on a garnishee to be deemed
12 effective and continuous throughout any given day.

13 Kotor respectfully requests that this Court grant the request and appoint any
14 agent or employee of McKasson & Klein LLP (Kotor's undersigned counsel), or
15 their appointee who is over the age of 18 and not a party to this action, in addition
16 to the U.S. Marshal, to serve the Rule B Process requested in this application.

17 **V. WAIVER OF EX PARTE NOTICE IS WARRANTED**

18 Local Rule 7-19.2 provides that "If the judge to whom the application is made
19 finds that the interest of justice requires that the ex parte application be heard
20 without notice...the judge may waive the notice requirements of L.R. 7-19.1."

21 A waiver of notice is warranted in this case due to the intangible nature of the
22 property sought to be attached and garnished (namely, bank accounts and
23 intangible property). Said property can be quickly transferred out of this District
24 and/or accounts closed before process of maritime attachment and garnishment
25 can issue and be executed.

26 **VI. CONCLUSION**

27 For the reasons stated, Kotor respectfully requests the Court enter an Order:

28 1. Authorizing the Issuance of Process of Maritime Attachment and

1 Garnishment directing any and all Garnishees to garnish any tangible or
2 intangible personal property in their possession, custody or control belonging to
3 Defendant;

4 2. Appointing any agent or employee of McKasson & Klein LLP (Kotor's
5 undersigned counsel), or their appointee who is over the age of 18 and not a
6 party to this action, in addition to the U.S. Marshal, to serve said process;

7 3. Review and ruling on this application on expedited, ex parte basis;

8 4. Granting such other and further relief as may be just, equitable and
9 proper.

10 Date: September 5, 2024

Respectfully submitted,

11
12 /s/ Neil B. Klein

Neil B. Klein

13 Maria del Rocio Ashby

14 McKasson & Klein LLP

Attorneys for Plaintiff Crnogorska

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17 /s/ J. Stephen Simms

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